the higher court's decision whatever its own view, until the higher court's decision is reversed or overruled. *Julian* v. *Beal,* 34 Ind. 371; *Rochester and G. V. R. Co.* v. *Clark Nat'l Bank,* 60 Barb. 234; *People* v. *McGuire,* 45 Cal. 56; *Field* v. *People,* 3 Ill. (2 Scan.) 79; *Martin* v. *Martin,* 25 Ala. 201; *Gray* v. *Gray,* 34 Ga. 499. Then comes a list of decisions almost supporting the court in the principal case, but allowing a deviation from the doctrine of stare decisis, where there is palpable error: *Lindsay* v. *Lindsay,* 47 Ind. 283; *Lombard* v. *Lombard* (1879), 57 Miss. 171; *Reed* v. *Ownby* (1869), 44 Mo. 204; *Kearney* v. *Buttles* (1853), 1 Oh. St. 362; *McVay* v. *Igams,* 27 Ala. 238; *Hilm* v. *Courtis,* 31 Cal. 399; *Braxan* v. *Bressler,* 64 Ill. 488; *Rothschild* v. *Grix,* 31 Mich. 150; *Sheldon* v. *Newton,* 3 Oh. St. 494 (if decision has been undisturbed for twenty years); and in *Davidson* v. *Beggs,* 61 Ia. 309 (if it has been the law of the state for fifteen years), stare decisis is the rule absolute. *Tribble* v. *Taul,* 23 Ky. (7 T. B. Mon.) 59; while in *Minnesota Min. Co.* v. *Nat'l Min. Co.,* 70 U. S. (3 Wall, 332), it was held that stare decisis was the doctrine if the title to property had been fixed once, and practically the same point was likewise decided in the celebrated case of *Gibbon* v. *Ogden,* 17 Johns (N. Y.) 488. That a single decision does not establish stare decisis, see *State* v. *Williams,* 13 S. C. 546; *Pratt* v. *Brown,* 3 Wis. 603; *Smith* v. *Smith,* 13 La. 441. The ultra vires feature of this case was discussed in 5 MICH. LAW REVIEW 5, p. 379.

CRIMINAL LAW—EXCLUSION OF PUBLIC FROM TRIALS.—The defendant was charged with the rape of a girl under the age of consent. When the girl was called to testify, the judge, anticipating that the evidence would be particularly filthy and obscene, ordered that the courtroom be cleared of everyone except the attorneys, defendant, court officers, newspaper reporters, and one other witness. No objection was made at the time by the defendant, but after conviction and sentence he appealed on the ground that he had not been accorded a public trial as guaranteed by the Constitution. *Held,* that the exclusion was too general, and that the trial was not public; also that the defendant by his silence at the time of the exclusion did not waive his constitutional right to a public trial, and so could set it up now on error. *State* v. *Hensley* (1906), — Ohio —, 79 N. E. Rep. 462.

The Constitution of the United States and the constitutions and statutes of all the states guarantee to every person charged with crime a speedy and public trial. It seems to be well recognized that a public trial is accorded even though everyone who might wish to attend cannot on account of the limited space in the courtroom. It is also well recognized that the judge in his discretion may exclude objectionable persons or others for good cause. COOLEY, CONSTITUTIONAL LIMITATIONS. Beyond these fundamental propositions, however, the subject becomes one of considerable difficulty. Granting that the judge has certain discretion, the question is how far can he go in excluding spectators and still not abrogate the right of the prisoner to a public trial? This question was early taken up in the State of California, and it was decided that the matter was almost entirely within the discretion of the judge. In a case in which all persons were excluded except the judge,

jurors, witnesses and persons connected with the case, the trial was held public. The court held that public meant only that the trial was not secret. *People* v. *Swafford,* 65 Cal. 223, 3 Pac. 809. This case was followed by *People* v. *Kerrigan,* 73 Cal. 222, 14 Pac. 849; *People* v. *Sprague,* 53 Cal. 491; *Benedict* v. *People,* 23 Colo. 126, and *Grimmet* v. *State,* 22 Tex. App. 36. A case in New York nearly on all fours with the principal case was decided to have been a public trial. In that case the judge, on account of the lascivious nature of the testimony, excluded all but those having business with the court or whose presence was requested by the defendant. It was there said that the trial judge has discretion so as to protect the public morals and the test is whether or not the discretion has been abused. *People* v. *Hall,* 51 N. Y. App. Div. 57. On the other hand there are strong cases decided on the other side and substantially agreeing with the principal case. In one case the judge ordered all "but reputable citizens" excluded; and who were "reputable citizens" was left entirely to the discretion of an officer stationed at the door. The order was carried out regardless of the protests of the defendant's attorneys, and large numbers of the friends of the accused were excluded although the court room was only partially filled by officers of the court. In a well written opinion the court held this not to have been a public trial. *People* v. *Murray,* 89 Mich. 276, 50 N. W. 995, 28 Am. St. Rep. 294, 14 L. R. A. 809. Another case holding substantially with *People* v. *Murray* decided that a prisoner had not been accorded a public trial when all had been excluded from the court room except the officers of the court. In the course of the opinion the judge says, "The doors of the court room are expected to be kept open, the public are entitled to be admitted * * * with due regard to the size of the court room, the conveniences of the court, the right to exclude objectionable characters, and youth of tender years, and to do other things which may facilitate the proper conduct of the trial." *People* v. *Hartman,* 103 Cal. 242, 37 Pac. 153, 42 Am. St. Rep. 108. This case disaffirms the earlier doctrine propounded in *People* v. *Swafford,* 65 Cal. 223, and distinguishes the cases of *Grimmet* v. *State,* 22 Tex. App. 36; *State* v. *Brooke,* 92 Mo. 573, *People* v. *Kerrigan,* 73 Cal. 222. Upon this general question, see also: *People* v. *Sprague,* 53 Cal. 491; *Stone* v. *People,* 3 Ill. 326; *State* v. *Brooks,* 92 Mo. 542; *Kugat* v. *State,* 38 Tex. Crim. 681; *United States* v. *Buck,* 24 Fed. Cas. No. 14, 680; *State* v. *McCool,* 34 Kan. 617. On the second point in the case, as to whether or not the defendant waived recourse to the error by not objecting at the trial, there is also a conflict of opinion. One line of cases holds that the burden is on the defendant to show error, and his silence at the trial raises a presumption that the exclusion was at his request. *People* v. *Swafford,* 65 Cal. 223; *Benedict* v. *People,* 23 Colo. 126. *Contra,* in accord with the principal case: *People* v. *Hartman,* 103 Cal. 242; *People* v. *Murray,* 89 Mich. 276.

CRIMINAL LAW—IMPEACHMENT OF WITNESS.—The three accused killed the deceased by shooting at him through the walls of a house. Their defense was that they were on his bond in a criminal case and were trying to arrest him, and he resisted. The question arising was as to what questions could